IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-8-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.7446 of 2006
and
WPMP No.8188 of 2006
and
WVMP No.48 of 2007

Mohammed Essak .. Petitioner

vs

1.The Accountant General (A&E)
Tamilnadu, Anna Salai
Chennai 600 018.

2.The Joint Director of Collegiate Education
Chennai Region, Chennai 600 002.

3.The Correspondent
Justice Basheer Ahmed Syed Women's College
(Formerly S.I.E.T. Women's College)
No.309, Anna Salai, Teynampet
Chennai 600 018. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the respondents, especially the first respondent relating to Revision and recovery as per his proceeding made in P21/1/M33-341/REV/2005-2006/3851-PPO No-C1 48380/EDA dated 12.7.2005 followed by the uncommunicated proceeding of the second respondent made in letter No.263/E2/2003 dated 'NIL' and quash the same as null and void, illegal and invalid and consequently directing the respondents to continue disbursing the full pensional benefits without any reduction in any manner whatsoever as paid prior to the impugned order taking into account his service rendered in the third respondent college from 6.3.1973 and grant of service and monetary benefits including selection and special Grades and pension disbursing the 52 days 'Earned leave salary' together with 90 days salary for leave on private affairs including the portion of pay recovered pursuant to the order impugned in the writ petition together with interest.

For Petitioner : Mr.A.Amalraj
For Respondents : Ms.Dakshayani Reddy
Government Advocate
(Education) for RR1 and 2

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

ORDER

Challenge is made to an order of the first respondent dated 12.7.2005 made in P21/1/M33-341/REV/2005-2006/3851-PPO No-C1 48380/EDA, whereby the re-fixation of the pension of the petitioner who was employed in the third respondent College, was ordered. The petitioner has brought forth this writ petition for a writ of certiorarified mandamus.

2.The affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

3.Admittedly, the petitioner was employed in the third respondent College from 1973, and till his retirement in 2000, he was actually working as an Attender. The pay was fixed, and accordingly, it has been paid. Now, there is an order by the first respondent for re-fixation of his pension stating that between 1975 and 1979, there was no grant by the Government; that during that period, the calculation of pension has been done as if the grant was made at that time; that it was a mistake that has crept in, and under the circumstances, it has become necessary for re-fixation of the pension. Accordingly, the first respondent has issued the orders, which is the subject matter of challenge in this writ petition.

4.The learned Government Advocate would submit that in the instant case, it is true that originally, there was fixation of pension as if the grant was made during the relevant period between 1975 and 1979, but not done so; that when it came to the knowledge of the first respondent, it became necessary to issue orders for the re-fixation of pension, and it was rightly done. Added further the learned Government Advocate that in the instant case, once there was no grant at all, and the fixation of pension was made as if the grant was made, there is no impediment in law for making re-fixation of the pension, and under the circumstances, the writ petition has got to be dismissed.

5.The Court paid its anxious consideration on the submissions made.

WEB COPY

6.It is quite clear that the petitioner was actually working as an Attender in the third respondent educational institution from 1973 to 2000, and he has also retired in 2000. Now, the proceedings have been initiated in the year 2005 for re-fixation of pension. Now, at this juncture, all the factual positions would clearly indicate the thorough unfairness on the part of the first respondent. Firstly, there was a delay. While he came to the employment in the year 1973 and he also served till 2000, now the proceedings have been initiated in the year 2005 as if there was no aid by the Government, and thus, the re-fixation was bad. It is pertinent to point out that after the lapse of a period of five years, the proceedings have been initiated.

https://hcservices.ecourts.gov.in/hcservices/

7.Secondly, once the pension was already fixed, and it was also given effect to, and payments were made, now making a re-fixation even without any notice to the aggrieved party namely the petitioner, was nothing but a glaring example where the principles of natural justice have been offended, and on that ground, it would be thoroughly unreasonable and unfair. Under the circumstances, without any hesitation, the order of the first respondent has got to be quashed. Accordingly, it is quashed, and this writ petition is allowed. No costs. Consequently, connected WPMP and WVMP are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Accountant General (A&E)
Tamilnadu, Anna Salai
Chennai 600 018.

2.The Joint Director of Collegiate
Education
Chennai Region
Chennai 600 002.

1 CC to the Government Pleader, SR NO.52834.
1 CC To Mr.A.Amalraj, Advocate, SR NO.52513.

WP No.7446 of 2006

KK(CO)
RVL 04.09.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/